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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In Re:	Case No. 09-50746-GWZ
ZANTE, INC.,	
	Jointly Administered
<input type="checkbox"/> Affects this Debtor.	BK 09-50747 through BK 09-50763
<input type="checkbox"/> Affects all Debtors.	
<input type="checkbox"/> Affects THE SANDS REGENT	Chapter 11 Case
<input type="checkbox"/> Affects PLANTATION INVESTMENTS, INC.	
<input type="checkbox"/> Affects LAST CHANCE, INC.	<u>DECLARATION OF HELEN K. KIMES</u>
<input type="checkbox"/> Affects DAYTON GAMING, INC.	<u>IN SUPPORT OF CLARKE COUNTY</u>
<input type="checkbox"/> Affects CALIFORNIA PROSPECTORS, LTD.	<u>DEVELOPMENT CORPORATION'S</u>
<input type="checkbox"/> Affects HERBST GAMING, INC.	<u>OBJECTION TO CONFIRMATION OF</u>
<input type="checkbox"/> Affects FLAMINGO PARADISE GAMING LLC	<u>DEBTORS' FIRST AMENDED</u>
<input type="checkbox"/> Affects E-T-T, INC.	<u>JOINT CHAPTER 11 PLAN OF</u>
<input type="checkbox"/> Affects MARKET GAMING, INC.	<u>REORGANIZATION</u>
<input type="checkbox"/> Affects THE PRIMADONNA COMPANY LLC	
<input type="checkbox"/> Affects HGI LAKESIDE, INC.	
<input type="checkbox"/> Affects HGI ST. JO, INC.	
<input type="checkbox"/> Affects HGI MARK TWAIN, INC.	
<input type="checkbox"/> Affects CARDIVAN COMPANY	
<input type="checkbox"/> Affects CORRAL COIN, INC.	
<input type="checkbox"/> Affects CORRAL COUNTRY COIN, INC.	Hearing Date: October 28 and 29, 2009
<input type="checkbox"/> Affects E-T-T ENTERPRISES, LLC	Hearing Time: 10:00 a.m.

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1 I, Helen K. Kimes, hereby declare as follows:

2 1. I am the president of Clarke County Development Corporation and I make this
3 declaration in support of *Clarke County Development Corporation's Objection to Confirmation of*
4 *Debtors' First Amended Joint Chapter 11 Plan of Reorganization*. This declaration is based upon
5 personal knowledge and if called upon as a witness to testify as to matters stated herein, I would be
6 competent and willing to do so.
7

8 2. Clarke County Development Corporation (hereafter "CCDC") entered into a
9 Management and Operation Agreement (the "Management Agreement") with Southern Iowa
10 Gaming ("SIG") on July 15, 2007. A copy of the Management Agreement is attached hereto as
11 **Exhibit A**. The Management Agreement relates to the joint license application process required
12 under Iowa law for the operation of gambling games on excursion boats. *See* Iowa Code, Chapter
13 99F, attached hereto as **Exhibit B**. Iowa Code requires CCDC to maintain its license as a
14 sponsoring organization and allows CCDC to enter into a management agreement with an operator
15 to operate the gambling facility. *Id.* The operator must also maintain a license. *Id.*
16

17 3. The Management Agreement was amended on July 15, 2007 (the "Amendment").
18 *See Exhibit A*. The Amendment required SIG to pay CCDC a sum equal to 1.5% of the previous
19 month's adjusted gross gaming revenue. *See Id.*
20

21 4. On or about September 30, 2004, SIG assigned the Management Agreement to
22 Herbst Gaming, Inc. ("HGI" or the "Debtor"), pursuant to the Agreement attached hereto as
23 **Exhibit C**. SIG had to obtain the consent of CCDC under the express terms of the Management
24 Agreement, which required CCDC's consent before assignment. In addition, CCDC's consent had
25 to be obtained because under Iowa law, in order for an operator to obtain a license, it must have the
26 cooperation and support of the non-profit entity, in this case, CCDC. *See* Iowa Code, Chapter 99F,
27 attached hereto as **Exhibit B**; The Joint License Application, attached hereto as **Exhibit D**.
28

1 5. On or about September 30, 2004, CCDC provided its consent to the assignment and
2 the Iowa Racing and Gaming Commission ("IRGC") thereafter approved the assignment to HGI.

3 6. Upon receipt of HGI's Petition for Bankruptcy, I realized that the Debtor had not
4 listed the Management Agreement as an executory contract, even though both parties have
5 continuing obligations under the Agreement. On or about April 28, 2009, my counsel contacted
6 Debtor's counsel and requested that the Management Agreement be listed on Debtor's Schedule G.
7 Debtor's counsel subsequently amended its Schedule G to include the Management Agreement.
8 *See* Schedule G, attached as **Exhibit E**.


9
10 7. On or about July 22, 2009, Debtor filed its First Amended Joint Plan for
11 Reorganization (the "Plan"). Pursuant to Sections 7.1 and 7.2 of the Plan, the Debtor proposes to
12 unilaterally assume the Management Agreement and assign it to Reorganized Herbst (the
13 "Assignee"). I was surprised by this, given that the Debtor never sought or even discussed
14 obtaining CCDC's consent to the assignment of the Management Agreement. Moreover, I was
15 surprised to learn that the Debtor sought to unilaterally assume and assign the Management
16 Agreement, because in order to obtain an operator's license from the IRGC, the Reorganized Debtor
17 must file an application with the IRGC, which requires the support and consent of CCDC. *See*
18 **Exhibit D**.

19
20 8. Once we learned that the Debtor proposed to unilaterally assume and assign the
21 Management Agreement, we contacted Debtor's counsel and notified him that CCDC did not
22 consent to the assumption and assignment of the Management Agreement, as there are a number of
23 new risks and uncertainty involved with such an assumption or assignment that were never factored
24 into the terms of the Management Agreement.

25
26 9. Debtor's counsel did not agree with CCDC's position; instead indicating that
27 because the identity of the operator of the gambling structure is not material, consent from CCDC
28

1 is not required. However, such an interpretation would in effect render the entire statutory scheme
2 of Iowa Code Chapter 99F ineffectual as a regulatory device. As a result, CCDC decided it was
3 necessary to file an objection to the confirmation of Debtor's First Amended Chapter 11 Joint Plan
4 for Reorganization.

5 10. I declare under penalty of perjury under the laws of the United States that the
6 foregoing is true and correct and that this Declaration was executed on September 21, 2009, at
7 Osceola, Iowa.
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10 Helen K. Kimes, President CCDC
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